IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO.35 OF 2004

IN

NOTICE OF MOTION NO.2509 OF 2001

IN

SUIT NO.4913 OF 2000

Mrs.Nargis M. Momerbhoy .. Petitioner (org.Applicant)

Versus

Majid Ahmedbhai Oomerbhoy & Ors... Respondents (Org.Plaintiffs)

Mr.Pradip Sancheti i/b Rustamji & Ginwala for the applicant

Mr.J.B.Chinai, Sanjay Jain i/b M.ranchoddas for deft.No.1

CORAM : P.V.KAKADE, J.

DATE : 9TH SEPTEMBER, 2004.

P.C.:

1. This Review Petition is preferred by the Petitioner,

who is unsuccessful Applicant in Notice of Motion No.2509 of 2001, against the Order dated 12th July, 2004 passed by this Court dismissing the Notice of Motion and confirming the interim order of appointment of Court Receiver and issuing consequential directions.

2. I heard the learned counsel for all the contesting parties. Perused the relevant record.

. The Review Petitioner, inter alia, submits that the review of the Order dated 12.7.2004 is sought mainly on the ground that submissions made on behalf of the Petitioner which were relevant and raised important and legal factual issues were not considered. It was further submitted that the Petitioner was not a party to the suit, and the possession of the Petitioner, who was admittedly the owner, cannot be affected without her being a party to the suit by appointing Receiver as it would amount to her being dispossessed. It was also contended that the plaintiffs in the suit have stated that no tenancy agreement was executed regarding the two flats involved in the suit and therefore, the findings to that effect that the suit flats were that of partnership tenancy, was not called for. Therefore, it

was submitted that the order of appointment of Court Receiver against the Petitioner was not legal and therefore, entire Order to that effect is sought to be reviewed.

3. It is needless to mention that Review contemplated under the Civil Procedure Code would be justified on three grounds viz (i) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the decree was passed or order was made, (ii) mistake or error apparent on the face of the record and (iii) for any sufficient reason. Evidently the first two grounds do not exist in the present case, because the learned counsel for the applicant was unable to point out any mistake or error apparent on the face of record. Similarly, the words "any other sufficient reason" have been interpreted to mean as " a reason sufficient on the grounds atleast analogous to those specified in the rule" i.e. a failure to bring to the notice of the Court the new and important matters, or error apparent on the face of record. Therefore, in my view, these prerequisites to entertain the review application do not

exist in the present case.

4. It was submitted on behalf of the Petitioner that some submissions made on behalf of the Petitioner were not considered when the notice of motion was adjudicated on merits. It was submitted that the Petitioner was not party to the proceedings and inspite of these aspects the impugned order was passed against her and also appointment of Receiver was made in respect of the property of which she was admittedly the owner. In this connection I must note that adjudication of the notice of motion is not a final adjudication of the suit and therefore, findings recorded on the basis of the prima facie case apparent from the record would be sufficient to pass any given order referring to the facts and factual circumstances and legal aspects. In the present case before us, it is an admitted as well as evident position that the Petitioner and the Plaintiff are the husband and wife living together and therefore, even though the Applicant was not party to the proceeding, she had full knowledge of the ongoing process of litigation between the parties. Similarly the documents which are brought on record during the course of hearing of the notice of motion have prima facie established

that the rent as well as outgoing charges regarding the flats were paid from the firm accounts, and not from the personal account of the applicant, winch aspect also weighed in favour of Respondents in order to prima facie hold that the suit flats were under the tenancy of the firm at the relevant time. The plaintiffs' assertion in the affidavit that the tenancy of the flats was surrendered by the firm was discarded by this court for want of sufficient supporting evidence. These are the salient aspects which weighed on the mind of this Court when it came to the conclusion that the suit flats were under the tenancy of the firm, and surrender of the tenancy was not proved on record in the course of the notice of motion.

5. Mr.Sancheti the learned counsel for the Petitioner sought the ruling of the Supreme Court in the case of Shankar K.Mandal & Ors. vs. State of Bihar and Ors. - (2003) 9 Supreme Court Cases 519, wherein the Apex Court was of the view that "if a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to

call the attention of the very Judges who have made the record. That is the only way to have the record corrected." In my considered view, there cannot be two opinions with regard to the observations made by the Apex Court, however, these are clearly not applicable to the present case, because there is no question of involvement of any wrong recording statements of the Counsel for the applicant. In other words, there is absolutely no case made out for review of the order passed by this Court in Notice of Motion and hence it would brook no interference to invoke the jurisdiction of this Court.

. In the result the Review Petition stands dismissed with no order as to costs.